INCOMPETENCE AND INSANITY -- Defendant's Fifth Amendment privilege against self-incrimination in Rule 11 examinations   Revised 12/2009

During mental health examinations under Rule 11, Ariz. R. Crim. P., the defendant is protected by the Fifth Amendment privilege against self-incrimination. Rule 11.7, Ariz. R. Crim. P.; A.R.S. § 13-4508 (A). The defendant's statements during examinations cannot be used against him in any proceeding to determine his guilt or innocence, unless he presents evidence intended to rebut the presumption of sanity. Rule 11.7(a); A.R.S. § 13-4508 (B).

A defendant may be compelled to submit to a mental health examination under Rule 11 if he puts his mental condition in issue, either by raising an insanity defense or by arguing that he lacked the necessary mental state to commit the crime. In *State v. Schackart*, 175 Ariz. 494, 858 P.2d 639 (1993), *cert. denied*, 511 U.S. 1046, the defendant killed a woman and argued that he did not intend to kill the victim and retained a psychiatrist to testify to that effect at trial. The State accordingly moved to have the defendant's mental condition examined under Rule 11, Ariz. R. Crim. P. The defendant argued that because he did not plead insanity, ordering him to submit to an examination by the court-appointed doctor violated his right against self-incrimination. The Arizona Supreme Court disagreed, stating that "a defendant who places his or her mental condition in issue and gives notice of an intention to rely on psychiatric testimony has opened the door to an examination by an expert appointed on motion of the state." *Id.* at 500, 858 P.2d at 645. The Court reviewed case law and found that "[t]he overwhelming majority of federal cases which have addressed the issue hold that a defendant may be compelled to submit to a psychiatric exam when he or she raises the defense of insanity. Although defendant here did not plead insanity, but sought only to

prove lack of intent, we think the reasoning of these cases nonetheless applies." *Id.* (internal citations omitted). The Court therefore held that "ordering defendant to submit to a mental examination did not violate his privilege against self-incrimination." *Id.* at 501, 858 P.2d at 646.

In addition, a defendant's Fifth Amendment privilege is not violated when he refuses to talk to psychiatrists during a Rule 11 examination. In *State v. Jenkins*, 193 Ariz. 115, 970 P.2d 947 (App. 1998), the defendant shot his wife and the trial court ordered a mental health examination under Rule 11, Ariz. R. Crim. P. On defense counsel's advice, the defendant refused to discuss the facts of the case with the mental health experts who examined him. After the Rule 11 hearing, the trial court found the defendant competent and he pleaded guilty to second degree murder. In his petition for post-conviction relief, he argued that his Fifth Amendment right against self-incrimination was violated during the mental competency proceeding because his counsel told him not to discuss the facts of the case with the examining psychiatrists. As a result, he contended, the experts lacked sufficient information to form accurate opinions about his state of mind at the time of the offense. The Court of Appeals rejected this claim:

> Defendant's statements to mental health experts were privileged under Arizona Rule of Criminal Procedure 11.7. The Fifth Amendment privilege against self-incrimination may be violated if the defendant's statements to a court-appointed psychiatrist during a compulsory examination are introduced at trial to prove guilt or innocence of the defendant. *State v. Tallabas*, 155 Ariz. 321, 323, 746 P.2d 491, 493 (App.1987). However, if the defendant voluntarily chooses not to reveal relevant information to a court-appointed psychiatrist in the Rule 11 proceeding upon advice of counsel, this does not constitute a violation of the Fifth Amendment prohibition against self-incrimination. The trial court properly dismissed this claim.

State v. Jenkins, 193 Ariz. 115, 121 ¶ 22-23, 970 P.2d 947, 953 ¶ 22-23 (App. 1998).